



**City of Framingham**  
**Personnel Policy # 37**

## **Policy on Discriminatory Harassment**

**Issue date: 08-31-2017**

**Revised: 10/1/2018**

**Type of policy: New ( )      Amendment ( )      Re-issued ( x )**

**Effective date: 08-31-2017**

**Level: Department ( )      Division ( )      City Wide ( x ) [Not Schools]**

### **Policy Statement**

This policy supplements the Personnel Policy of the City of Framingham regarding harassment in the workplace by managers, supervisors, employees, vendors, contractors, and members of the public who use “City facilities”. This policy also describes examples of conduct which may constitute unlawful harassment, and sets forth a complaint procedure, to be followed by persons, who believe that they are victims of unlawful harassment and/ or retaliation due to a harassment complaint.

**References:** M.G.L. c. 151B; Title VII of the Federal Civil Rights Act of 1964; M.G.L. c. 272 §.92A (Public Accommodations); 42 U.S.C. §§ 12111-12117(Americans With Disabilities Act) and the 2008 ADA Amendment Act; 29 U.S.C. § 621 (Age Discrimination in Employment Act); City of Framingham Personnel Policies Elimination of Sexual Harassment in the Workforce; A.D.A. Grievance Procedure; Maternity Leave; Religious Holidays. Board of Selectmen Affirmative Action Policy.

### **Special Terms**

This policy recognizes that persons are protected from discriminatory harassment under both Federal and State laws as referenced herein and that persons have rights under both Federal and State laws regarding discriminatory harassment. It is the intent of this policy to be consistent with these laws and in all respects to provide equal protection offered by these laws. This policy supplements and does not supersede the City Personnel Policy Governing Sexual Harassment.

## **Policy Description**

It is the goal of Framingham to promote a workplace that is free of discriminatory harassment of any type, including sexual harassment. Discriminatory harassment consists of unwelcome verbal or physical conduct that is based on a characteristic or category protected by State and Federal laws. Characteristics or categories include; gender, gender identity, race, color, national origin, ancestry, religion, age, disability, genetics, military status, sexual orientation, and persons who are retaliated against because they are or have been complainants or cooperating witnesses in discriminatory harassment matters. Framingham will not tolerate harassing conduct that affects employment conditions, that interferes unreasonably with an individual's performance, or that creates an intimidating, hostile, or offensive work environment.

Discriminatory harassment of employees occurring in the workplace, or in connection with work-related travel, and/or work-sponsored events will not be tolerated. Further, any retaliation against an individual who has complained about harassment or retaliation against individuals for cooperating with an investigation of a discriminatory harassment complaint is similarly unlawful and will not be tolerated.

Because the City takes allegations of discriminatory harassment seriously, we will respond promptly to complaints of discriminatory harassment. Upon receipt of complaints where it is determined that conduct which violates this policy has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

While this policy sets forth City goals of promoting a workplace that is free of discriminatory harassment, the policy is not designed or intended to limit the authority of authorized City officials to discipline or take remedial action for workplace conduct which authorized City officials deem unacceptable, regardless of whether that conduct satisfies the definition of harassment.

## **II. Definitions**

- A. Discriminatory harassment is a form of discrimination which includes unwelcome conduct, whether verbal or physical, that is based on a characteristic protected by law. Discriminatory harassment includes, but is not limited to:
  - 1. Display or circulation of written materials or pictures that are degrading to a member of a protected category or class of persons as previously described.
  - 2. Verbal abuse, slurs, derogatory comments, or insults about, directed at, or made in the presence of an individual or group as previously described.

- B. Sexual harassment is a form of sex discrimination which includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature between members of the opposite sex or of the same sex when:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or is used as a basis for decisions affecting an individual's employment; or
  2. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating a hostile work environment.
- C. Gender Identity: A person's internal, deeply-felt sense of being male, female, or something other or in-between, regardless of the sex they were assigned at birth. Everyone has a gender identity.

Unwelcome sexually oriented conduct that has the effect of creating a work environment that is hostile, offensive, intimidating or humiliating to either male or female workers may constitute sexual harassment.

The following examples of workplace conduct may constitute sexual harassment. The following examples include unwelcome conduct which, depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness, may violate this policy:

- Unwelcome sexual advances – whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; sexually oriented comments on an individual's body, comments about or discussion of an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons, leering, whistling, brushing against the body, sexual gestures, suggestive comments;
- Inquiries into one's sexual experiences; and/or
- Retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by this organization.

For further information and clarification of prohibited conduct, please consult City Personnel Policy - "Policy and Procedures for the Elimination of Sexual harassment in the Workforce".

### **III. Complaint Procedures for Discriminatory Harassment**

All officials, whether appointed or elected, employees, managers, and supervisors of the City share responsibility for preventing, discouraging and reporting any form of discriminatory harassment. The primary responsibility for ensuring proper investigation and resolution of harassment complaints rests with the Director of Human Resources or his/her designee, who will administer the policy and procedures described herein as well as the City's Affirmative Action Policy and the Personnel Policy on The Elimination of Sexual Harassment in the Workplace.

If any City employee believes that while performing their City duties he or she has been subjected to discriminatory harassment by any person, the employee has the right to file a complaint with the person(s) appointed under this policy as the investigating officer(s). This may be done in writing or orally. In addition, persons who believe they have been subjected to discriminatory harassment by City employees or officials, while using or attempting to use City public accommodations such as recreational facilities, parks, and meeting places may also file a complaint with the City using the procedures described herein.

Prompt reporting of discriminatory harassment is in the best interest of the City and is essential to a fair, timely, and thorough investigation. Accordingly, complaints should be filed as soon as possible following the incident(s) at issue. Complaints may be made by contacting the Director of Human Resources or the Chief Operating Officer/ EEO Officer. The City Human Resources Director may be contacted at (508) 532 5490 and the Chief Operating Officer may be contacted at (508) 532 5404 or they may be visited in City Hall at 150 Concord St., Framingham, MA.

### **IV. Complaint Investigation**

When we receive a complaint, the City Human Resources Director shall determine if an investigation is necessary, and if so, whether the complaint should be investigated by the Human Resources Department, other in-house personnel, or an outside investigator, and shall designate an investigative officer. If the complaint pertains to the City Human Resources Director, the Chief Operating Officer shall make this determination and designation. The designated investigative officer will promptly investigate the allegation in a fair and expeditious manner to determine whether there has been a violation of City policy. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include private interviews with the person filing the complaint, with the person alleged to have committed the discriminatory harassment, and with any first hand witnesses. Every employee, whether they are the complainant, the person alleged to have committed harassment, or a witness are expected to fully cooperate with all aspects of an investigation. The investigating officer shall determine whether attorneys are permitted to be present or participate in the complaint investigation. When we have completed our investigation, we will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

Notwithstanding any provision of this policy, we reserve the right to investigate and take action on our own initiative in response to behavior and conduct which may constitute discriminatory harassment regardless of whether an actual complaint has been filed.

If it is determined that conduct which violates this policy has occurred, we will act promptly to eliminate the offending conduct, and where it is appropriate authorized City officials may also impose disciplinary action.

## **V. Disciplinary Action**

As a result of a complaint and investigation, if it is determined that during the course of their working duties or official duties a City employee or official has engaged in conduct in violation of this policy, authorized City officials may take such action as is appropriate under the circumstances. Such action will be in compliance with any and all applicable disciplinary procedures of Local and State laws, City policy, and applicable collective bargaining agreements and may range from counseling to termination from employment, as well as such other forms of disciplinary action as authorized officials deem appropriate under the circumstances.

## **VI. State and Federal Remedies**

In addition to the above, a person who believes they have been subjected to discriminatory harassment of any type, including sexual harassment, may file a formal complaint with either or both of the government agencies set forth below. Using the City complaint process does not prohibit a person from filing a complaint with these agencies. Each of the agencies requires that claims be filed within specified time periods as relates to the complained of incident therefore a person who wishes to make a complaint to these agencies should promptly contact these agencies to verify how the deadlines apply to the complaint and to be advised of any filing procedures.

### **The United States Equal Employment Opportunity Commission (“EEOC”)**

J.F.K. Federal Building  
Government Center  
4<sup>th</sup> Floor, Room 475  
Boston, MA 02203  
(800) 669-4000  
(617) 565-3200  
TTY (617) 565-3204 (M-F 8:30-5:00)

### **The Massachusetts Commission Against Discrimination (“MCAD”)**

#### **Boston Office:**

One Ashburton Place, Room 601  
Boston, MA 02108  
(617) 727-3990 (M-F 8:45 – 5:00) [www.mass.gov/mcad](http://www.mass.gov/mcad)

#### **Springfield Office:**

424 Dwight Street, Room 220  
Springfield, MA 01103  
(413) 739-2145

#### **Worcester Office:**

22 Front Street, 5<sup>th</sup> Floor  
P.O. Box 8038  
Worcester, MA 01641  
(508) 799-6379